



Reservations Based on Place of Birth

Why in News

Recently, the Chief Minister of Madhya Pradesh has announced that the [government jobs will be reserved](#) for the “children” of the state and legal provisions will be made for the same.

Key Points

▪ Arguments Against Providing Reservation Based on Place of Birth:

- **Article 16** in the Constitution of India refers to equality of opportunity in government jobs.
 - **Article 16(1)** provides for equality of opportunity for all citizens in matters relating to 'employment or appointment' to any office under the State.
 - **Article 16(2)** provides that there cannot be any discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
- Reservation on the basis of domicile and residence would mean **discrimination** as even a minimal departure creates an irrational class depriving a meritorious candidate of his fundamental rights.
- This kind of parochialism encourages [regionalism](#) and **threatens the unity of the nation**.

▪ Arguments in Favour of Providing Reservation Based on Place of Birth:

- **Article 16(3)**, allows for making provisions in government appointments with respect to residence (not place of birth).
 - The **Parliament (and not the legislature of a state)** can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory.
- Some states have been using the loopholes in the laws to reserve government jobs for locals. They have used **other criteria like language tests or proof of having resided/studied in the state for a certain period of time**.
 - In Maharashtra, only those living in the state for over 15 years with fluency in Marathi are eligible.
 - In Jammu and Kashmir, government jobs are reserved for “domiciles”
 - In West Bengal, reading and writing skills in Bengali is a criterion in recruitment to some posts.
 - Last year, the Govt of Karnataka issued a notification mandating private employers to give “priority” to Kannadigas for clerical and factory jobs in the state.
- It is argued that giving preferential treatment to the residents of a state will help in **rightful allocation of the resources of the state** and would encourage people to work within the boundaries of their state.
- This is also seen as a way to **stop migration of people** from backward states to metropolitans, thereby reducing the burden on such cities.

Distinction between domicile status and place of birth

- According to the SC ruling in DP Joshi vs Madhya Bharat case, 1955, **Domicile or status of residence is a fluid concept** that can change from time to time, **unlike place of birth**, which is fixed.
 - Domicile of a person means his **permanent home**.
 - The place of birth is one of several grounds on which domicile status is conferred.
- **SC Judgments:**
- In **2019, the Allahabad High Court** struck down a recruitment notification issued by the Uttar Pradesh Subordinate Service Selection Commission, which prescribed preference for women who were “original residents” of the state.
 - In the **Kailash Chand Sharma vs State Of Rajasthan case, 2002**, the Supreme Court ruled that residence, be it within a state, district or any other area, cannot be a basis for preferential reservation or treatment.
 - While the Constitution specifically prohibits discrimination based on place of birth, the Supreme Court, in **DP Joshi vs Madhya Bharat case, 1955** has held domicile reservation, especially in educational institutions, as constitutional.

Way Forward

- The move to give reservation to the candidates born in the state itself runs **against the spirit of constitutional equality and fraternity**. It is more likely that such politically motivated steps would be overturned by the judiciary as has been done several times in the past.
- Also, the government is not an employment guaranteeing agency rather an authority which should create an environment through its policies which minimizes inequalities in income, status, facilities and opportunities.

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